

THIS DECISION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

May 15, 1997

Paper No. 10
TJQ

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Media Arts Group, Inc.

Serial No. 74/605,105

Barbara R. Shufro and Patricia L. Cotton of Pillsbury,
Madison & Sutro for applicant.

Steven R. Fine, Trademark Examining Attorney, Law Office 107
(Thomas Lamone, Managing Attorney).

Before Simms, Hanak and Quinn, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Media Arts Group,
Inc., doing business as MAGI, to register the mark
CINEMACLIPS for "commemorative collages."¹

The Trademark Examining Attorney has refused
registration under Section 2(e)(1) of the Act on the ground
that applicant's mark, when used in connection with
applicant's goods, is merely descriptive thereof. When the

¹Application Serial No. 74/605,105, filed December 1, 1994,
based on a bona fide intention to use the mark in commerce.

refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs.

Before turning to the respective arguments, we pause to consider the specific nature of applicant's "commemorative collages." Applicant has described its goods as follows: "The commemorative collages incorporate quotes, pictures and historical information relating to particular motion pictures. The collages also include a piece of celluloid containing a 'still' photograph from the actual film." (appeal brief, p. 2)

Applicant argues that the mark is only suggestive. More specifically, applicant contends that the term "cinema" is suggestive of the motion picture industry. As for the term "clip", applicant contends that this term is suggestive of a particular element of applicant's memorabilia, namely a frame of a motion picture film. Applicant further contends that this term is suggestive, and not merely descriptive, because "clip" essentially is a term of art meaning a segment of a motion picture which, when played, shows a small portion of that picture. Thus, according to applicant, a "clip" in the motion picture industry is more than just a single frame of a motion picture, which is the particular item included in applicant's commemorative collages. Alternatively, applicant maintains that even if the individual words comprising its mark have descriptive significance, the composite mark, when considered as a whole, is not merely descriptive. Applicant also states

that it is unaware of any others using CINEMACLIPS in the trade. In support of its position that the refusal should be reversed, applicant has relied upon dictionary definitions of the terms "cinema" and "clip."²

The Examining Attorney contends that the applied-for mark merely informs purchasers that applicant's goods feature cinematic clips. The Examining Attorney argues that the single frame in each of applicant's collages is clipped from a cinema motion picture, and that this single frame is no less a "clip" from a motion picture than a film sequence. The Examining Attorney has submitted dictionary definitions of the terms "cinema" and "clip."³

A mark is descriptive if it "forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods." *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 189 USPQ 759, 765 (2nd Cir. 1976) (emphasis added). See also: *In re Abcor Development Corp.*, 616 F.2d 525, 200 USPQ 215 (CCPA 1978). Moreover, generally speaking, in order to be descriptive, the mark must immediately convey information as to the ingredients, qualities or characteristics of the goods with a "degree of particularity." *Plus Products v. Medical Modalities*

²Applicant failed to submit copies of the pertinent dictionary listings. Nonetheless, pursuant to judicial notice, we have considered this dictionary evidence to be of record and, thus, have considered it in reaching our decision.

³The listing for the term "clip" was attached to the Examining Attorney's brief. As suggested by the Examining Attorney, we take judicial notice of this evidence.

Associates, Inc., 211 USPQ 1199, 1204-1205 (TTAB 1981); Holiday Inns, Inc. v. Monolith Enterprises, 212 USPQ 949, 952 (TTAB 1981); In re TMS Corp. of the Americas, 200 USPQ 57, 59 (TTAB 1978); and In re Diet Tabs, Inc., 231 USPQ 587, 588 (TTAB 1986). Contrary to the gist of some of applicant's remarks, whether a term is merely descriptive is determined not in the abstract but in relation to the goods for which registration is sought.⁴ In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

The term "cinema", as shown by the dictionary evidence, means, in pertinent part, "a motion picture." The term "clip" means, in pertinent part, "something that is clipped; something clipped off, as a sequence from a motion picture." There can be no dispute, given the dictionary definitions of record, about the readily understood meanings of the individual words comprising the mark sought to be registered. We do not believe, however, that the combination of these words results in a term which, when

⁴In this connection, we note the Examining Attorney's reference to another application filed by applicant, namely, application serial no. 74/605,103, and its identification of goods reading "film clips, namely, frames of motion picture and/or photographic film encased in and/or mounted on paper, plastic or pasteboard." A copy of the application was never submitted, however, and, thus, the application does not form part of the record in this appeal. In any event, even if this evidence were considered, it would not be persuasive of a different result in this appeal. In determining whether a proposed mark is descriptive, the mark must be considered "when applied to the goods or services involved." In re Abcor Development Corp., supra at 218. That a term may be descriptive of certain goods or services is not determinative of whether it is descriptive of other goods or services. In re Stroh Brewery Co., 34 USPQ2d 1796, 1797 (TTAB 1995). Here, the identification of goods is different from the one in the other application.

considered in its entirety, is merely descriptive of applicant's commemorative collages. That is to say, applicant's mark, as proposed to be used in connection with commemorative collages, does not convey an immediate idea about the goods with any degree of particularity. Rather, we find that the mark is just suggestive of commemorative collages comprising memorabilia from particular cinema motion pictures.

That each of the collages includes a single frame from the actual film featured in the collage is not persuasive of a different result. We suspect that this item would be a fairly insignificant part of the entire collage. In any event, we agree with applicant that the term "clip" commonly refers to a section of a motion picture, and that use of the term in applicant's mark is just suggestive of the single frame of a motion picture in applicant's collages. Consumers will view the entire mark as simply suggesting that applicant's commemorative collages, incorporating quotes, pictures, historical information, and a frame of a film, are like a clip from a cinema motion picture.

To the extent that any of the points raised by the Examining Attorney raises doubts on the issue of whether the mark is descriptive, it is the policy of the Board to resolve doubts in applicant's favor with the knowledge that any third party is free to file an opposition and develop a more comprehensive record. In re Gourmet Bakers, Inc., 173 USPQ 565 (TTAB 1972).

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Decision: The refusal to register is reversed.

R. L. Simms

E. W. Hanak

T. J. Quinn
Administrative Trademark Judges
Trademark Trial and Appeal Board

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